Supreme Court, U.S.
FILED
FEB 26 1997
CLERK

No. 96-1193

In The

Supreme Court of the United States

October Term, 1996

EDDYEMAE R. BEARDS, *et al.*,

Petitioners,

vs.

THE BIBLE WAY CHURCH OF OUR LORD JESUS CHRIST OF THE APOSTOLIC FAITH OF WASHINGTON, D.C., PASTOR JAMES SILVER, SISTER YVONNE L. WILLIAMS, SISTER JEANNE MARSHALL, DEACON WENDELL M. SLADE, and DEACON JEROME STEVENS,

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

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LIST OF INTERESTED PARTIES

The petitioners are Eddyemae R. Beards and her spouse, Julius Beards.

The respondents are The Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith of Washington, D.C., a religious society incorporated under the laws of the District of Columbia, and its Board of Trustees: Sister Yvonne L. Williams, Chair; Pastor James Silver; Sister Jeanne Marshall; Deacon Wendell M. Slade; and Deacon Jerome Stevens.

The corporate respondent herein, Bible Way Church, does not have a parent company, and has no nonwholly-owned subsidiaries.

All respondents join in this brief in opposition.

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RESPONDENTS' BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the District of Columbia Court of Appeals is reported at 680 A.2d 419 (D.C. 1996).

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

On May 27, 1994, petitioners (plaintiffs below) sued respondents in the Superior Court of the District of Columbia, Civil Action No. 94-6049 (the "Employment Case"), seeking $16.8 million in damages arising out of Petitioner Eddyemae Beards' loss of employment as Financial Secretary of the Bible Way Church, a duly organized and qualified religious organization in the District of Columbia. Petitioners' raised six separate causes of action: (1) breach of contract; (2) harassment; (3) defamation; (4) intentional infliction of emotional distress; (5) tortious interference with an employment contract; and (6) invasion of privacy. Pet. App. at 2-3.

Two weeks later, on June 10, 1994, petitioners filed a second suit against respondents in the same court, Civil Action No.94-6580 (the "Mismanagement Case"). Seeking un-specified damages, petitioners alleged in Count I ("Negligence") that respondents had breached a duty of care by not adopting and following either of two standards of internal financial reporting. Count II of the Complaint alleged that the Will of the deceased founder of Bible Way Church (the late Bishop Smallwood E. Williams) created a testamentary trust for the benefit of the Church. Count III sought an "accounting." Pet. App. at 4-5.

The trial court granted respondents' motion to dismiss the Employment Case in its entirety. The trial judge ruled that causes of action (1) and (5) were facially barred because Mrs. Beards was an "at-will" employee, and therefore had no contract rights which were susceptible of being breached. Cause of action no. (2) was dismissed as non-existent under District of Columbia law. Causes of action (3), (4), and (6)

were held to be facially barred by the District of Columbia's one - year statute of limitations applicable to defamation and cognate torts (D.C. Code §12-301(4) (1995 Repl. Vol.); *Doe v. Southeastern University*, 732 F. Supp. 7 (D.D.C. 1990), *appeal dism'd*, 927 F.2d 1256 (D.C. Cir. 1991). Pet. App. at 7. None of the courts below was asked to or did address the constitutional claim petitioners raise here for the first time, *i.e.*, that application of the "at-will employment" doctrine by a court exclusively in a private context amounts to State action impairing the validity of a contract in violation of the Contracts Clause in Article I, Section 10, of the Constitution.

Respondents also moved in the trial court to dismiss the Mismanagement Case. With respect to Count I, respondents contended the trial court lacked subject matter jurisdiction because respondents were immune under the First Amendment's Freedom of Religion Clause from judicial imposition of internal standards of governance. As to Count II, respondents asserted that the Will of Bishop Williams (Pet. App. at 32-40) facially did not create a testamentary trust, and, as to Count III, that an "accounting" was duplicative of the relief requested in Count I. Pet. App. at 6.

The trial judge dismissed Counts II and III of the Mismanagement Case on the grounds asserted by respondents. As to Count I, although the trial court found "plaintiffs do not charge defendants with misappropriation, an intentional tort," R/M at 251 (references herein to the record before the District of Columbia Court of Appeals in the appeal of the "Management Case" are preceded by the prefix "R/M"; references to the record on appeal in the "Employment Case" are preceded by the prefix "R/E"), the trial court felt the standard-of-care allegations of Count I might be resolved by resort to "objective" standards of accounting which would not unduly embroil the court in church governance. Pet. App. at 6. Accordingly, the trial court denied the motion to dismiss Count I.

Pursuant to settled law in the District of Columbia, *United Methodist Church v. White*, 571 A.2d 790 (D.C. 1990), Pet. App. at 8, respondents took an interlocutory appeal to the District of Columbia Court of Appeals from the denial of their First Amendment immunity claim in the Mismanagement Case. Petitioners likewise appealed from the dismissal of their claims in the Employment Case. The appeals were consolidated.

A unanimous panel of the Court of Appeals affirmed the dismissal of the Employment Case, which is the only suit implicated in petitioners' "Questions Presented." (Indeed, as noted *infra*, pp.9-10, petitioners' first "Question Presented" is not the subject of *any* ruling by the courts below, and therefore literally is not "presented" here.) The Court of Appeals held, Pet. App. at 26:

> In the District of Columbia, where there is no clear expression of an intent to enter into a contract for a fixed period, we recognize a presumption that "the parties have in mind merely the ordinary business contract for a continuing employment, terminable at the will of either party." [Citations omitted.]
>
> The Beardses failed to cite in the complaint any facts which, if taken as true, would rebut the presumption of at-will employment.

The Court further noted that "[a]lthough the complaint did not expressly allege a wrongful discharge claim," Pet. App. at 28, even if it had made such an allegation under the District of Columbia's "public policy exception" to the at-will employment doctrine (*Adams v. George W. Cochran & Co., Inc.*, 597 A.2d 28 (D.C. 1991)), the Complaint still failed to state a claim, Pet. App. at 28:

> As currently pleaded, the complaint sets forth facts showing only that Eddyemae Beards' unauthorized issuance of [a] check was later subject to Pastor

> Silver's disapproval and reprimand. The facts as alleged, moreover, suggest that Eddyemae Beards' dismissal by the church's five-member board of trustees in December 1993 [two years after the check incident] was the result of an administrative reorganization taking place in the church, and was not related to her earlier issuance of the check...nor was there any other allegation, or proffered evidence, that conceivably could state a claim on some other public policy ground this court might recognize. [Footnote omitted.]

The only other significant ruling of the Court of Appeals was to reverse the trial court's ruling on respondents' First Amendment immunity defense to Count I of the Mismanagement Case. Acknowledging "the church is not above the law," Pet. App. at 12, the court below nevertheless ruled (Pet. App. at 16):

> ...the court - by having to decide whether particular [accounting or financial reporting] principles *should* be applied - will inevitably have to exercise discretion over a matter that initially requires ecclesiastical judgment....[A] church's financial regime, including any required reports to members, necessarily reflects an array of decisions about a member's obligation to pledge funds, and about the leaders' corresponding responsibility to account for those funds, that a civil court cannot arbitrate without entangling itself in doctrinal interpretations.

Accordingly, the Court of Appeals ordered Count I of the Mismanagement Case also dismissed, as Counts II and III already had been.

Petitioners' motion for a rehearing *en banc* was denied, no judge of the Court of Appeals having requested a vote thereon. Pet. App. at 31.

B. STATEMENT OF FACTS

In the Employment Case, petitioners alleged that for many years Eddyemae R. Beards had been a member of and employed as the Financial Secretary of the Bible Way Church, and for a similarly lengthy period her spouse, Julius Beards, had been a member of and a Deacon of the Church (Amended Complaint, ¶1; R/E at 174). The Bible Way Church eliminated the position of Financial Secretary as of December 1, 1993 (Amended Complaint, ¶16; R/E at 180). Mrs. Beards further alleged that beginning in January, 1992, in connection with her unilateral decision to issue a $15,600 salary check to a former church Elder, Wallace Williams, Respondent James Silver--the church's pastor--began a campaign against her (Amended Complaint, ¶14; R/E at 179) which included falsely accusing her of embezzlement (Amended Complaint, ¶30; R/E at 185-86). The trial court found, however (R/E at 321), "plaintiffs have not pointed to any statute that required the Church to issue the $15,600 check to Elder Williams."

In ruling on respondents' motion to dismiss the Complaint, the trial court found the Complaint alleged that in 1979 Mrs. Beards was hired as a part-time employee of the Church; her status was changed to full time in 1991; and shortly after June 28, 1991 (the date of Bishop Smallwood Williams' death), Pastor Silver arranged with Mrs. Beards to serve as Financial Secretary for the Church. Further, in January, 1992, Mrs. Beards issued a check to Elder Wallace Williams, who was a suspended clerical official of the Bible Way Church, and on January 31, 1992, Pastor Silver told her she should not have done so. Shortly thereafter, various conversations or meetings on that subject took place, which allegedly were

defamatory. Last, on December 1, 1993, approximately two years after the incident involving the check, the Church eliminated the position of Financial Secretary as part of an administrative reorganization (R/E at 316-17).

In the Mismanagement Case, as described by the trial court (R/M at 246), petitioners contended in Count I of the Complaint (entitled "Negligence"):

> ...because defendant Church is incorporated under Chapter 9 of Title 29 of the District of Columbia Code, and is therefore considered a tax exempt religious organization, the Church is subject to several doctrines which require maintenance and distribution of financial statements and accountings.

Petitioners further alleged that "defendants negligently failed to provide financial statements and an accounting" (R/M at 250).

In opposing petitioners' motion for summary judgment in the Mismanagement Case, Yvonne L. Williams, the Chair of the Bible Way Church's board of trustees, submitted an "uncontested" (Pet. App. at 20) affidavit (R/M 239-44) which was relied on by the Court of Appeals. The affidavit presented that Bible Way Church had been founded over half a century ago by the late Bishop Smallwood E. Williams (R/M at 239); that at all times since the death of Bishop Williams the affiant had been the only member of the Williams family represented on the Church's board of trustees (R/M at 240); that the Church had never received a request to be audited or ever been audited by the Internal Revenue Service or the District of Columbia, and no question had ever been raised by either governmental body about the Church's status as a tax-exempt entity (R/M at 240-41); that the Church was aware of various external financial reporting practices (R/M at 242), but viewed its financial structure as being derived from "its

religious beliefs in the individual's ultimate accountability to an omniscient deity." Specifically, (Affidavit, ¶8, R/M at 241):

> Members of the Church supervise the financial operations of the Church through their own personal actions. Each member of the Church is a member of at least one "Club" within the Church organization, and information as to contributions made by the Club members is freely available from each Club President. There is open discussion and announcement of funds raised for the Church's anniversary and other fund drives, and it is a subject of some competition among the Clubs or individuals as to which has the highest support for a given fund drive. Indeed, for many years, Mrs. Beards herself was the chief coordinator of the annual Church banquet, and in that capacity had complete access to information about funds raised. Each year at a subsequent general Church business meeting, Mrs. Beards herself reported on the total banquet monies raised.

Finally (Affidavit, ¶9, R/M at 242):

> During most of the past ten years, internal processing of expenditures has been handled chiefly by Mrs. Beards...[and] [d]uring the entire time she was processing internal expenditures, Mrs. Beards never made a single documented complaint about improprieties or inadequacies in expenditures or Church financial practices.

The Complaint failed to allege any specific facts indicating that either of the petitioners--long-standing members of the Bible Way Church--had *ever* previously raised any issue about dissemination of or failure to disseminate financial information

to members of the Church, or had *ever* acted in any way other than clearly to recognize and accept the Church's policies in this regard.

REASONS FOR DENYING THE WRIT

I.
PETITIONERS' PROPOSED "QUESTION NO. 1," INVOLVING A SECULAR EMPLOYEE'S ASSERTED RIGHT TO SUE A RELIGIOUS INSTITUTION, IS NOT PRESENTED BY THE DECISIONS BELOW.

Petitioners' first "Question Presented" is:

> "Whether an employee of a religious organization...who performs purely secular work pursuant to an at-will employment contract, is precluded from bringing a viable civil action against a religious institution...for breach of an employment contract...."

That question is not presented by the decisions below.

In the trial court, in addition to defending on the basis of "at-will" employment, an alternative contention of respondents as to Mrs. Beards' contract claims was that the decision of the Bible Way Church effective December 1, 1993, to eliminate the position of Financial Secretary (then held by Petitioner Eddyemae Beards) constituted a matter of internal church governance over which the trial court lacked subject matter jurisdiction (R/E at 50-52). The trial court, however, rejected the contract-based claims raised by Mrs. Beards' because it found she was facially an at-will employee and validly dischargeable as such. R/E at 318-22. Accordingly, respondents' alternative First Amendment argument was not ruled on by the trial court, which stated explicitly, "Because defendants' second argument [at-will employment] resolves this issue, the

court need not address the merits of defendants' other points [*i.e.*, First Amendment immunity, *inter alia*]. R/E at 318, n. 3.

The Court of Appeals likewise analyzed Mrs. Beards' employment claims solely from a secular perspective. It was immaterial to the court's decision whether Mrs. Beards was employed by a church, a chain store, or a chamber of commerce. Thus, the court below wrote (Pet. App. at 26), "The Beardses failed to cite in the complaint any facts which, if taken as true, would rebut the presumption of at-will employment." The only operative fact in the view of the Court of Appeals was whether there had been a "clear expression of an intent to enter into a contract for a fixed period," *ibid.* Finding the Complaint alleged no such facts, the Court of Appeals affirmed the dismissal of Mrs. Beards' contract claims.

Therefore, the first question petitioners present to this Court literally does not arise on the record below. No ruling was made that Mrs. Beards was barred from suing a church on a breach-of-employment claim because of the institution's religious nature. There simply is no question for this Court to consider.

II.

THE CONSTITUTIONAL ISSUE OF STATE AT-WILL EMPLOYMENT LAW ASSERTEDLY BEING A VIOLATION OF THE IMPAIRMENT OF CONTRACTS CLAUSE, SET FORTH AS PETITIONERS' PROPOSED QUESTIONS 2 AND 3, WAS NOT RAISED IN OR RULED ON BY THE COURT BELOW.

Petitioners utterly failed below to raise their contention that application or enforcement of the at-will employment doctrine is a violation of the Contracts Clause in Article I,

Section 10, of the Constitution. Accordingly, petitioners are barred from raising that contention here.

In response to the question in their docketing statement before the Court of Appeals asking them to "[s]tate concisely the principal issue(s) in this appeal or petition," petitioners answered:

> Whether civil action is barred by First Amend., U.S. Const.? Whether trial court erred as to all counts in the Complaint, granting dismissal in favor of defendants?

Similarly, in the argument headings on this issue in their main brief to the Court of Appeals, filed January 11, 1996, petitioners framed the questions as follows:

> II. AN EMPLOYEE OF A RELIGIOUS INSTITUTION MAY BRING A CIVIL ACTION FOR WRONGFUL DISCHARGE FROM EMPLOYMENT WHERE THE DISCHARGE IS MOTIVATED BY AN EMPLOYEE'S REFUSAL TO VIOLATE FEDERAL AND STATE LAWS, NOTWITHSTANDING THE "AT-WILL-EMPLOYMENT DOCTRINE." MOREOVER, THE "AT-WILL-EMPLOYMENT" DOCTRINE IS ARCHAIC AND SHOULD BE ABANDONED IN THE DISTRICT OF COLUMBIA ON OTHER GROUNDS.
>
> A. The "At-Will-Employment Doctrine" is a Dying Breed and Should be Abandoned by the Courts in the District of Columbia
>
> B. The "At-Will-Employment" Doctrine is Under Judicial Attack in Over Thirty (30) States
>
> C. The Doctrine of Promissory Estoppel Applicable [*sic*]
>
> D. Implied Covenant of Good faith and Fair Dealing

E.Retaliatory Discharge Arising Out of Employee "Whistle-Blowing" Cases

Nowhere in the foregoing argument headings, in petitioners' brief to the Court of Appeals, in the decision of that court, or in the decision of the trial court have petitioners raised a constitutional argument under the Contracts Clause. Accordingly, petitioners cannot raise that issue now.

It is settled that this "Court will not decide federal constitutional issues raised here for the first time on review of state court decisions." *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969). As stated by this Court, *id.* at 439:

> Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground.

None of the "Other Grounds" raised in petitioners' arguments to the Court of Appeals asserted that at-will employment is inconsistent with or barred by the Contracts Clause. Petitioners are simply casting about for a constitutional nexus to justify bringing their case before this Court. Under *Cardinale*, that attempt is futile.

III.
THERE IS NO "STATE ACTION" FOR PURPOSES OF THE CONTRACTS CLAUSE WHEN A COURT IMPLEMENTS COMMON LAW "AT WILL" EMPLOYMENT POLICIES BETWEEN PRIVATE PARTIES.

Petitioners' rest their constitutional claim on an interpretation of a portion of Clause I of Section 10 of Article I of the Constitution (the Contracts Clause), which states:

> No State shall...pass any...Law impairing the Obligation of Contracts....

That constitutional proscription on its face requires "State action." None is present here.

In a wrongful discharge suit between private parties, "before [an employee] can recover for alleged violations of the First and the Fourteenth Amendments, he must establish that his discharge by [the employer] was 'state action.' " *Pavolini v. Bard-Air Corp.*, 645 F.2d 144, 147 (2d Cir. 1981) (holding that government regulation of airlines through the Federal Aviation Administration does not constitute a sufficient showing of "State action").

Furthermore, a private party's merely doing what it would have been entitled to do at common law does not constitute "State action." *Jackson v. Metropolitan Edison Company*, 419 U.S. 345, 354, n. 11 (1974) (government regulation of electric utility does not constitute sufficient "State action" to require a hearing before the utility terminates service to a non-paying customer). As cogently articulated in *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 164-65 (1978):

> This Court...has never held that a State's mere acquiescence in a private action converts that action into that of the State.
>
> * * *
>
> If the mere denial of judicial relief is considered sufficient encouragement to make the State responsible for those private acts, all private deprivations of property would be converted into public acts whenever the State, for whatever reason, denies relief sought by the putative property owner.

That in essence is the fatal flaw in petitioners' position. Their grievance is that by *not* changing established "at-will" employment doctrines, State courts and legislatures are "impairing" the validity of contracts. This is utter nonsense. Again, as stated in *Flagg Bros.*, *supra*, 436 U.S. at 166:

> ...the crux of respondents' complaint is not that the State *has* acted, but that it has *refused* to act. This statutory refusal to act is no different in principle from an ordinary statute of limitations whereby the State declines to provide a remedy for private deprivations of property after the passage of a given period of time.

Inasmuch as the text of the Contracts Clause requires State action, but none is present here, petitioners facially fail to raise a constitutional question for review by certiorari.

IV.
"AT-WILL EMPLOYMENT" IS AN ACCEPTED PART OF AMERICAN JURISPRUDENCE, UNAFFECTED BY CONTRACTS CLAUSE CONCERNS.

In numerous contexts this Court has had occasion to review the doctrine of "at-will employment," and has accepted it as an ordinary part of American jurisprudence, devoid of any

Contracts Clause implications. *See, e.g., Board of County Commissioners, Waubansee County, Kansas v. Umbehr*, ___ U.S. ___, 116 S. Ct. 2342, 2347 (1996) ("absent contractual, statutory or constitutional restriction, the government is entitled to terminate [employees] for no reason at all") (holding that the *First Amendment*--not the Contracts Clause--protects independent contractors employed by the government from termination in retaliation for their exercise of freedom of speech); *N.L.R.B. v. Town & Country Elec., Inc.*, ___ U.S. ___, 116 S. Ct. 450, 457 (1995) ("a company disturbed by legal but undesirable activity, such as quitting without notice, can offer its employees fixed-term contracts, rather than hiring them 'at will' ") (holding that a worker can be both an "employee" within the meaning of the National Labor Relations Act, 29 U.S.C. §151 *et seq.*, as well as a union-paid organizer); *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 72 (1990) ("employees at will [have] no legal entitlement to continued employment") (holding that promotions, transfers, and recalls based on political affiliation violate public employees' *First Amendment*--not Contracts Clause--rights); *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 136 (1990) ("notwithstanding the traditional employment-at-will doctrine," ERISA preempts "public policy ...limitations upon an employer's power to discharge at-will employees"); *Andrews v. Louisville & Nashville R.R. Co.*, 406 U.S. 320, 324 (1972) ("the very concept of 'wrongful discharge' implies some sort of statutory or contractual standard that modifies the traditional common-law rule that a contract of employment is terminable by either party at will") (holding that a collective bargaining agreement may provide a right not to be discharged, in which case a discharged employee's rights and remedies are governed by that agreement).

Indeed, the major theoretical justification petitioners cite for modifying the at-will employment doctrine, Note, *Protecting At Will Employees Against Wrongful Discharge:*

The Duty to Terminate Only in Good Faith, 93 Harv. L. Rev. 1816 (1980), omits any Contracts Clause analysis and argues instead, "The at will doctrine should be altered not because of 'unequal bargaining power,' but because it is inefficient." *Id.* at 1830. The Note therefore concludes that traditional state common law processes should be the basis for finding an implied contractual term or duty to discharge only in good faith, without advocating a slashing Contracts Clause solution founded on the Constitution. *Id.* at 1844.

Thus, there is no reason to subject traditional State at-will employment doctrines to Contracts Clause analysis. Those doctrines continue to evolve, as the court below noted in this very case, Pet. App. at 29, n. 8, and are best left to further refinement by individual State courts and legislatures rather than the nation-wide regulatory interpretations of this Court.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be denied.

Respectfully submitted,

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